

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

2 1998

In the Matter of	)	
	)	
Bell Operating Companies	)	
	)	
Petitions for Forbearance from the	)	CC Docket No. 96-149
Application of Section 272 of the	)	
Communications Act of 1934, As	)	
Amended, to Certain Activities	)	

**DOCKET FILE COPY ORIGINAL**

**BELLSOUTH PETITION FOR RECONSIDERATION**

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby requests limited reconsideration of certain portions of the Common Carrier Bureau's *Forbearance Order*<sup>1</sup> in the above referenced proceeding. In the *Forbearance Order*, the Bureau granted the respective petitions of BellSouth and other Bell operating companies ("BOCs") pursuant to Section 10<sup>2</sup> of the Act<sup>3</sup> for forbearance from the application of the separate affiliate requirements of Section 272<sup>4</sup> to the BOCs' E911 services and to BellSouth's reverse search directory assistance services. In doing so, however, the Bureau imposed certain conditions and

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<sup>1</sup> *Bell Operating Companies -- Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Docket No. 96-149, Memorandum Opinion and Order, DA 98-220 (released February 6, 1998), *errata* (released March 3, 1998) ("*Forbearance Order*").

<sup>2</sup> 47 U.S.C. § 160.

<sup>3</sup> The Telecommunications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.* ("the Act").

<sup>4</sup> 47 U.S.C. § 272.

established dates by which those conditions were to be met.<sup>5</sup> In this Petition, BellSouth seeks reconsideration of certain aspects of those conditions.

Specifically, BellSouth seeks reconsideration of the conditions imposed on BOCs' E911 services and BellSouth's reverse search directory services that subscriber listing information associated with these services be provided to nonaffiliated entities.<sup>6</sup> The Bureau erroneously concluded that notwithstanding forbearance from the separate affiliate requirement of Section 272, BOCs' E911 services and BellSouth's reverse search directory services must still be subjected to a nondiscrimination obligation as if they were separate operations. Moreover, the nondiscrimination conditions imposed on these services are based on an inappropriate "unqualified nondiscrimination" standard. Under the appropriate "unjust or unreasonable" discrimination standard required by Section 10, the conditions imposed in the *Order* are not warranted.

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<sup>5</sup> The Bureau required the BOCs by April 2, 1998, to make available to nonaffiliated E911 service providers all customer listing information that the BOCs use to provide E911 services at the same rates, terms, and conditions the BOCs impose on their own E911 operations. The Bureau similarly required BellSouth by April 2, 1998, to make available to nonaffiliated directory assistance providers all directory listings that BellSouth uses in its reverse search services at the same rates, terms, and conditions it imposes on its own reverse directory operations. Additionally, the Bureau required the BOCs by May 2, 1998, to make necessary changes to their cost allocation manuals to accommodate the Bureau's determination that BOCs' E911 services and BellSouth's reverse search services should be treated as nonregulated activities.

<sup>6</sup> More particularly, BellSouth seeks reconsideration of the conditions imposed on its reverse search directory assistance operations only insofar as the conditions obligate BellSouth either to share or to refrain from using listing information of other carriers' customers that BellSouth is contractually prohibited from sharing.

**I. The Bureau Erroneously Applied the Section 272 “Unqualified” Nondiscrimination Standard to BOCs’ E911 Services and BellSouth’s Reverse Search Services**

Section 10 of the Act requires the Commission to forbear from applying any provision of the Act to a telecommunications carrier if the Commission finds, among other things, that enforcement of such provision is not necessary to ensure that a carrier’s practices are not “unjustly or unreasonably discriminatory.”<sup>7</sup> In the *Forbearance Order*, the Bureau acknowledged that this nondiscrimination standard is different from the “unqualified prohibition against discrimination” embodied in Section 272(c)(1).<sup>8</sup> The Bureau also purported to impose conditions on the BOCs’ E911 operations and BellSouth’s reverse search directory services that adhere to the more lenient nondiscrimination standard required by Section 10. On closer review, however, it is apparent that the conditions imposed are actually based on the “unqualified” nondiscrimination standard of Section 272, the very section from which the Bureau granted forbearance. The Bureau must modify its Order to impose only those conditions that are necessary to ensure that affected carriers’ practice are not *unjustly or unreasonably* discriminatory.

In the *Forbearance Order*, the Bureau’s analyses of the forbearance requests for both E911 services and reverse search services began properly with the recognition that the respective carriers’ practices were to be measured against the “unjust or unreasonable” standard of Section 10(a), rather than against the “unqualified prohibition” standard of Section 272.<sup>9</sup> For example,

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<sup>7</sup> 47 U.S.C. § 160(a)(1).

<sup>8</sup> See, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, 11 FCC Rcd 21905, 21998 (1996) (“*Non-Accounting Safeguards Order*”).

<sup>9</sup> *Forbearance Order* at ¶¶ 31, 81.

after expressly observing that the Commission previously had determined that Section 272(c)(1) “establishes an unqualified prohibition against discrimination buy a BOC in its dealings with its section 272 affiliate and other entities,”<sup>10</sup> the Bureau described its task in analyzing the E911 petitions as being to “consider . . . whether [a] practice [that may be deemed discriminatory under the Section 272 standard] would be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1).”<sup>11</sup> The Bureau made similar prefatory remarks regarding its analysis of BellSouth’s reverse search services.<sup>12</sup>

Notwithstanding these professions to apply the Section 10 standard, however, the *Order* reveals that the Bureau in reality applied the more stringent Section 272 standard in developing the conditions imposed on the petitioners. For example, in addressing the new conditions imposed on BOCs’ E911 services, the Bureau concedes that “the conditions set forth in paragraph 34 [ostensibly on the basis of the Section 10(a) standard], *effectively impose the non-discrimination safeguards contained in section 272(c)(1)* as they relate to the BOCs’ E911 services.”<sup>13</sup> The Bureau made a similar concession in addressing BellSouth’s reverse search services: “[W]e conclude . . . that we should forbear from application of section 272 to BellSouth’s interLATA reverse directory services, yet *effectively impose the non-discrimination safeguards contained in section 272(c)(1)’s non-discrimination safeguards* through appropriate conditions.”<sup>14</sup> Thus, the Bureau’s *Order* “effectively impose[s]” the nondiscrimination standard

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<sup>10</sup> *Forbearance Order* at ¶ 30 (quoting *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21998).

<sup>11</sup> *Forbearance Order* at ¶ 31.

<sup>12</sup> *Id.* at ¶ 70.

<sup>13</sup> *Id.* at ¶ 39 (emphasis added).

<sup>14</sup> *Id.* at ¶ 83 (emphasis added).

of Section 272, notwithstanding the purported forbearance from applying that section and notwithstanding the express “unjust or unreasonable” standard articulated in Section 10.

Because the conditions established in the *Forbearance Order* are admittedly based on a standard more stringent than that required by Section 10, the Bureau has failed to provide a reasoned analysis that the conditions imposed in the *Order* are “necessary” to meet the more lenient test of that section. Accordingly, the Bureau must reconsider its decision and adopt no more conditions than are “*necessary*” to ensure that carrier practices are not “*unjustly* or *unreasonably*” discriminatory.

## **II. The Conditions Imposed in the Order Are Not Warranted Under the Appropriate “Unjust or Unreasonable” Standard**

The *Forbearance Order* marks the first time the BOCs’ E911 services and BellSouth’s operator-provided reverse directory services have been subjected to treatment as nonregulated services. Indeed, in the only prior circumstance in which the regulatory classification of E911 service has been directly presented for consideration, the Bureau expressly declined to determine whether the service was “basic” or “enhanced.”<sup>15</sup> Similarly, although the court overseeing the AT&T divestiture had concluded that reverse search service was an information service under the consent decree, the court nevertheless permitted BellSouth to offer the service subject to a

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<sup>15</sup> See, Letter from Gary M. Epstein, Chief, Common Carrier Bureau, to Alfred A. Greene, American Telephone & Telegraph Co., Reference No. 61210 (Dec. 30, 1982) (“We shall not consider the question of whether the E911 service is ‘basic’ or ‘enhanced’ since we have determined that, in any event, the public interest requires that these services continue to be offered without interruption by the BOCs.”). See also, *Forbearance Order* at ¶ 13.

requirement that it be provided as part of BellSouth's regulated operations.<sup>16</sup> BellSouth has been providing these services and treating them as regulated offerings at least since these decisions.

In addition to classifying these services as nonregulated activities for the first time, the *Forbearance Order* also subjects them to conditions to which they have never been subject. In particular, notwithstanding that these services are fully integrated with other services in every respect imaginable -- personnel, facilities, systems, tariffs, methods and procedures -- as has been permitted throughout their history, the *Forbearance Order* subjects these services to obligations based on the fiction that these integrated services are easily identifiable as discrete business operations. They are not. Yet, the *Order* reflects no consideration of the burdens and complexities of severing these services into constituent parts in assessing whether the current offerings involve only just and reasonable and, hence, permitted, discrimination.

This is particularly true in the case of E911 service. Prior to the *Forbearance Order*, BellSouth did not distinguish between E911 service provided to E911 customers and access to the listing and other information underlying that service. The *Order* now requires BellSouth to sever these functions and recognize them as distinct product offerings -- one, a nonregulated E911 service that now "buys" the information that has always been an inherent aspect of the offering, and the other, a "listings" product that must be available to other potential E911 service providers.

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<sup>16</sup> See, *United States v. Western Electric*, No. 82-0192 (D.D.C. June, 2 1989) (attached to BellSouth's Petition in this proceeding as Attachment 1) (authorization to provide customer name and address service granted on condition of that revenues generated by the service be used "solely to support [BellSouth's] regulated operations.").

The task is much more complex than the Bureau appears to have presumed in the *Order*. Among the matters that must be addressed for either or both aspects of the new service structure are proper definition and delineation between the services, appropriate cost studies, tariff development or modifications, tariff filings and approvals, modification or creation of new training programs and materials, review and development of appropriate sales and ordering channels, revisions to installation, testing and maintenance procedures, implementation of necessary accounting mechanisms, modifications of billing functions and integration with existing systems, and identification and assignment of managerial and staff lines of responsibility for the bifurcated service activities.<sup>17</sup> The *Order* is void of any assessment that these measures are necessary to ensure there is no unjust or unreasonable discrimination in BOCs' use of E911 listing information, particularly in the absence of any evidence of requests for such information by entities certified to provide E911 service.

Nor would factors the Bureau did consider support a conclusion that the conditions imposed are necessary to prevent unjust or unreasonable discrimination. For example, the Bureau cites the inclusion of a requirement of "[n]ondiscriminatory access. . . to 911 and E911

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<sup>17</sup> That the Bureau did not give adequate consideration to these factors as consequences of its decision is reflected in the timeframes established in the *Order* for implementation of the conditions adopted. Although BellSouth has been working diligently to "bring these two new services to market" without jeopardizing existing provision of E911 service, BellSouth anticipates that even on an expedited schedule, it would need 120 days more to complete the required work, barring other presently unforeseen impediments. Similarly, because cost allocation manuals (CAMs) reflect accounting processes that track operational processes, the requisite CAM filings cannot be made until the operational matters have been resolved. At a minimum, the Bureau should waive on its own motion the *Order*'s effective dates to allow a reasonable time for implementation and associated CAM filings.

services” among the BOCs’ interLATA checklist requirements as support for its decision.<sup>18</sup> In reality, however, that requirement undermines the Bureau’s reasoning.

As the Bureau notes, the checklist requirement for 911 and E911 services “implicitly recognizes the BOCs’ unique position in the provision of those services.”<sup>19</sup> Thus, the checklist provision reflects Congress’ expectation of the continued “uniqueness” of the BOCs’ provision of 911 and E911 services, subject only to the assurance that other carriers’ *customers* are not excluded from the benefits of those services.<sup>20</sup> Had Congress meant to cause BOCs to surrender this “uniqueness” through sharing listing information, it would have said so more directly *and* would not have made access by others to the BOCs’ 911 and E911 *services* the checklist requirement.

Review under the appropriate “unjust or unreasonable” standard also requires reconsideration of the condition imposed on BellSouth’s reverse search service that BellSouth either cease using listing information from other carriers that BellSouth is not also contractually permitted to share, or violate its contractual obligations to these carriers. Under this appropriate standard, the Bureau *should* inquire whether it is unreasonable or unjust for BellSouth to honor a contractual obligation to a competing local carrier not to make that carrier’s customer

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<sup>18</sup> *Forbearance Order* at ¶ 31.

<sup>19</sup> *Id.*

<sup>20</sup> The Bureau acknowledges that the Commission previously has interpreted the checklist requirement as addressing the “inclu[sion] [of] competitive LECs’ *customers* in [a BOC’s] automatic location identification database.” *Forbearance Order* at ¶ 31 (citing *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-137, Memorandum Opinion and Order, FCC 97-298, at ¶ 274 (Aug. 19, 1997) (“*Ameritech Michigan Order*”) (emphasis added)).



information available to third parties when that carrier has deemed it desirable to permit its customers' names to be located through BellSouth's reverse search services.

As it stands, the Bureau's *Order* leads to the anomalous result that BellSouth customer listings are available through BellSouth's reverse search services, but the listings of customers of other carriers who do not want BellSouth to share their subscribers' listing information with third parties are not available through BellSouth's reverse search services. Indeed, one could argue that the Bureau's *Order* compels BellSouth to engage in unjust or unreasonable discrimination against carriers who want to control the dissemination of their customers' listings by requiring them to choose between relinquishing such control or not having their customers' listings accessible through BellSouth's reverse search services. The Bureau should reconsider its decision and conclude that it is not unjust or unreasonable for BellSouth to honor its commitments made to other carriers.<sup>21</sup>

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<sup>21</sup> In the meantime, BellSouth will satisfy the condition imposed in the *Order* by not using in its reverse directory services listing information about other carriers' subscribers unless BellSouth is also able to make that information available to other directory assistance providers on the same terms and conditions. To implement this protection, BellSouth has undertaken the process of manually identifying and marking each of the 4000 to 5000 affected customer records to block them from availability on reverse search queries. BellSouth respectfully requests the Bureau to waive on its on motion the current deadline of the *Order* to allow BellSouth an additional thirty days in which to complete this task. For administrative convenience, the Bureau should also modify the CAM filing requirement associated with the reverse search offerings to comport with the filing date recommended in note 17, *supra*.

## CONCLUSION

For the reasons set forth herein, the Bureau should reconsider its *Forbearance Order* under the appropriate "unjust or unreasonable" nondiscrimination standard established in Section 10 of the Act and modify the *Order* accordingly.

Respectfully submitted,

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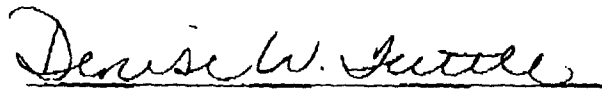
Date: April 2, 1998

### **CERTIFICATE OF SERVICE**

I do hereby certify that I have this 2nd day of April, 1998, served all parties to this action with a copy of the foregoing **PETITION FOR RECONSIDERATION** by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

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